Supreme Court, U.S.
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No. 94-2075

In The

# Supreme Court of the United States

OCTOBER TERM, 1994

L.G.

*Petitioner,*

*vs.*

EL PASO COUNTY DEPARTMENT
OF SOCIAL SERVICES

*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION

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## LIST OF PARTIES

The parties to the proceedings below are as follows:

L.G., Petitioner / Appellant

The El Paso County Department of Social Services, Respondent / Appellee

The Guardian ad Litem for the minor child, K.G., Respondent / Appellee

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TO THE HONORABLE SUPREME COURT:

The Respondent, El Paso County Department of Social Services, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, L.G.

### STATEMENT OF THE CASE

Respondent/appellee corrects and amends Petitioner/appellant's statement of the case as follows:

L.G. incorrectly asserts that, following a visitation between the father and minor child in February, 1991, M.G. (hereinafter "mother") made allegations that L.G. had sexually abused the minor child. The record clearly shows that mother sought medical treatment for the minor child for a urinary tract complaint and it was the child that reported the sexual abuse by L.G. to the examining physician who then reported his concerns to the El Paso County Department of Social Services (hereinafter "DSS"). At the initial temporary shelter hearing, mother participated in person and through counsel, as was her right, but it was DSS which

successfully presented evidence to the presiding magistrate which resulted in the court's entry of protective order regarding the minor child.

A jury trial on the merits was held in April, 1992, wherein the DSS successfully carried its burden of proof. A unanimous jury panel found that the minor child was dependent and neglected in that she was exposed to an injurious environment and lacked proper parental care as a result of L.G.'s acts or failures to act.

Upon review, the Colorado Court of Appeals determined that the trial court had jurisdiction to order a treatment plan into effect for the protection of the minor child until such time as the issues which led to the adjudication of dependency and neglect were successfully addressed and the protective issues resolved. Upon further appeal, the Colorado Supreme Court determined that Congress did not intend that the Parental Kidnapping Prevention Act, 28 U.S.C. Section 1738A (hereinafter "PKPA") pertain to state initiated dependency and neglect cases as such actions are not custody determinations but cases initiated for the protection of children who are victims of abuse and neglect.

## SUMMARY OF THE ARGUMENT

Every state within the United States is charged by law and moral obligation to protect the minor children residing within its borders. In those states where government agencies have sole legal authority to initiate dependency and neglect actions to protect children from abuse and neglect, those actions are not custody determinations as contemplated by Congress when drafting the PKPA. To find otherwise would necessarily result in the inability of those states to protect children who are the subjects of foreign divorce decrees, regardless of the protective concerns surrounding them.

## REASON FOR DENYING THE PETITION

### I.

L.G. claims that there is an "unreconciled split in the interpretation of the Federal Statute by the highest courts of several states" when, in fact, of the five State Supreme Courts which have considered the issue, (Arizona, New Mexico, Nebraska, Maine and

Colorado) only Arizona and Maine have held that PKPA does so apply. See *Matter of Pima County Juvenile Action*, 711 P. 2d 1200 (Ariz. App. 1985), 712 P. 2d 431 (Ariz. 1986), and *Richardson v. Richardson*, 644 A. 2d 472 (Me. 1994). And those cases may be distinguished on their facts in that the laws of Arizona and Maine permit the private filing of a petition in dependency and neglect, whereas the remaining states require public agencies to initiate dependency and neglect petitions. See *State ex rel. Department of Human Services v. Avinger*, 720 P. 2d 290 (N.M. 1986), *In re Interest of L.W.*, 486 N.W. 2d 486 (Neb. 1992), and *L.G. v. El Paso County Department of Social Services*, 890 P. 2d 647 (Colo. 1995). This is significant because in *Pima County* and *Richardson*, the petitioners were private parties who, in filing the dependency and neglect petitions, were attempting to relitigate the custody issues already determined in the states of original jurisdiction, and the application of PKPA was appropriate. However, in *Avinger*, *L.W* and *L.G.*, New Mexico, Nebraska and Colorado, respectively, have consistently held that PKPA does not apply to dependency and neglect cases because the nature of these cases are distinct from "custody determinations" as contemplated by Congress in enacting the PKPA. The remainder of the cases cited by counsel for the Petitioner are appellate court rulings which were not reviewed by the courts of last resort in those states.

## CONCLUSION

For the reasons set forth above, Respondent, El Paso County Department of Social Services, prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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